BAIL SLIP

1. That the appellants 1 to 7/Accused Nos.23 to 27, 29 & 30 Viz., 1. Suresh 2. Chandran 3.Arul 4.Sundaram 5.Raja 6.Mahendran and 7.Jalendran on the file of this High Court were enlarged on bail as per order dated 22.1.2004 in Crl.MP.No.10/2004 in Crl.A. 3 of 2004.

2. That the appellant/Accused No.7 Viz., Rajamani, on the file of this High Court was enlarged on bail as per order dated 21.1.2004 in Crl.MP.No.37/2004 in Crl.A. 11 of 2004.

3. That the appellant/Accused No.13 Viz., Venkat in Crl.A.No.13/2004 on the file of this High Court was enlarged on bail as per order dated 21.1.2004 in Crl.MP.No.46/2004 in Crl.A. 13 of 2004.

4. That the appellant/Accused No.14 Viz., Munusamy on the file of this High Court was enlarged on bail as per order dated 21.1.2004 in Crl.MP.No.60/2004 in Crl.A. 17 of 2004.

5. That the appellant/Accused No.6, 11 and 22 Viz., 1.Devanesan @ Mahadevan, 2.Palani, 3.Peter, on the file of this High Court were enlarged on bail as per order of Court dated 8.4.2004 in Crl.MP.No.4204/2004 (A6) and dated 3.2.2004 in Crl.MP.No.94/04 (A11 & A22).

6. That the appellant/Accused No.19 Viz., Venkatesan in Crl.A.No.24/2004 on the file of this High Court was enlarged on bail as per order of court dated 3.2.2004 in Crl.MP.No.99/2004 in Crl.A. 24 of 2004.

7. That the appellants/Accused Nos.3 & 4 Viz., Meganathan and Purushothaman were enlarged on bail as per order of court dated 29.3.04 in Crl.MP.No.2805/2004 in Crl.A. 51 of 2004.

8. That the appellants/Accused Nos.2, 8, 9, 10, 12, 16, 17 & 18, Viz., 1.Rajendran, 2.Mohan, 3.Shankar, 4.Murugan, 5.James, 6.Vadivelu, 7.Ponnuvelu, 8.Ganesan in Crl.A.No.134/2004 on the file of this High Court were enlarged on bail as per order dated 26.2.04 in Crl.MP.No.907/2004 in Crl.A. 134 of 2004.

9. That the appellant/Accused Nos.5, 15, 20 & 21 Viz., 1.Pandian, 2.Guna, 3.Manoharan, 4.Raja in Crl.A.No.147/2004 on the file of this High Court were enlarged on bail as per order dated 16.2.2004 in Crl.MP.No.1092/2004 (A20 & 21) and dated 29.3.2004 in CrlMP.2680/2004 in Crl.A. 147 of 2004 respectively.

10. That the appellant/Accused No.1 Viz., Sarangan in Crl.A.No.152/2004 on the file of this High Court was enlarged on bail as per order of this court dated 27.1.2006 in Crl.MP.No.124/2006 in Crl.A. 152 of 2004.

https://hcservices.ecourts.gov.in/hcservices/

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-9-2006

CORAM

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
AND
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.Nos.3, 11, 13, 17, 21, 24, 51, 134,
147, 152 and 468 of 2004

1.Suresh
2.Chandran
3.Arul
4.Sundaram
5.Raja
6.Mahendran
7.Jalendran .. Appellants in CA 3/2004
Accused Nos.23 to 27, 29 & 30

Rajamani .. Appellant in CA 11/2004
Accused No. 7

Venkat .. Appellant in CA 13/2004
Accused No. 1

Munusamy .. Appellant in CA 17/2004
Accused No. 14

1.Devanesan @ Mahadevan
2.Palani
3.Peter .. Appellants in CA 21/2004
Accused Nos. 6, 11, 22

Venkatesan .. Appellant in CA 24/2004
Accused No. 19

1.Meganathan
2.Purushothaman .. Appellants in CA 51/2004
A3 & 4

1.Rajendran
2.Mohan
3.Shankar
4.Murugan
5.James
6.Vadivelu
7.Ponnuvelu
8.Ganesan .. Appellants in CA 134/2004
Accused Nos.2, 8, 9, 10, 12,
16, 17 & 18

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

1.Pandian
2.Guna
3.Manoharan
4.Raja .. Appellants in CA 147/2004
Accused 5, 15, 20 & 21

Sarangan .. Appellant in CA 152/2004
A1,

vs

State rep. by
Inspector of Police
Vellavedu Police Station
(Crime No.2448/1993) .. Respondent in all appeals

State by:
Inspector of Police
Vellavedu Police Station
Vellavedu
Cr.No.2448/1993 .. Appellant in CA 468/2004

vs

1.Sarangan
2.Rajendran
3.Meganathan
4.Purushothaman
5.Pandian
6.Devanesan @ Mahadevan
7.Rajamani
8.Mohan
9.Sankar
10.Murugan
11.Palani
12.James
13.Venkat
14.Munusamy
15.Guna
16.Vadivelu
17.Ponnuvelu
18.Ganesan
19.Venkatesan
20.Manoharan
21.Raja
22.Peter
23.Suresh
24.Chandran
25.Arul
26.Sundaram
27.Raja
28.Elumalai
29.Mahendran

HIGH COURT OF JUDICATURE MADRAS
सत्यमेव जयते
WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

30.Jalendran .. Respondents in CA 468/2004

Criminal appeals 3, 11, 13, 17, 21, 24, 51, 134, 147 and 152 of 2004 preferred under Sec.374 of the Code of Criminal Procedure against the judgment of the Additional District and Sessions Judge (Fast Track Court No.3), Chilgleput District at Poonamallee in S.C.No.286 of 2002 dated 29.12.2003.

C.A.No.468 of 2004 preferred under Sec.378 of the Code of Criminal Procedure against the judgment of the Additional District and Sessions Judge (Fast Track Court No.3), Chilgleput District at Poonamallee in S.C.No.286 of 2002 dated 29.12.2003 seeking to set aside the order of acquittal.

For Appellants : Mr.T.Sudanthiram
for A-23 to A-27, A-29,
A-30, A-14, A-2, A-12, A-5,
A-15, A-20, A-21
Mr.R.S.Jeevaratnam for A-7
Mr.T.Munirathina Naidu
for A-13
Mr.A.Padmanabhan
for A-6, A-11, A-22
Mr.A.M.Rahmath Ali for A-19
Mr.K.Veeraragavan
for A-3, A-4, A-1
Mr.R.Gothandaraman
for A-8 to A-10, A-16, A-17
A-18 died

For Respondent/
State : Mr.P.Kumaresan, A.P.P.

For Appellant in
CA 468/2004 : Mr.P.Kumaresan, A.P.P.

For Respondents in
CA 468/2004 : Mr.T.Sudanthiram
for A-5, A-14, A-15, A-20,
A-21, A-23, A-24, A-26,
A-27, A-29 & A-30

Mr.K.P.Chandrasekaran
for A-22

Mr.E.Rajaram
for A-23, A-24, A-27 and
A-29

Mr.K.Veeraraghavan
Amicus Curiae for A-28

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

COMMON JUDGMENT

(Judgment of this Court was delivered by M.CHOCKALINGAM, J.)

This judgment shall govern all these appeals in C.A.Nos.3, 11, 13, 17, 21, 24, 51, 134, 147 and 152 of 2004 preferred by A-23 to A-27, A-29, A-30; A-7; A-13; A-14; A-6, A-11, A-22; A-19; A-3, A-4; A-2, A-8 to A-10, A-12, A-16 to A-18; A-5, A-15, A-20, A-21; and A-1 respectively, who stood charged, tried and found guilty by the Court below namely the Additional Sessions Court, Fast Track Court No.3, Poonamallee, in S.C.No.286 of 2002, as follows:

CHARGES:

A-1 to A-30 under Sec.148 of I.P.C.
A-1 to A-5 and A-8 to A-19 under Sec.302 of I.P.C.
A-6 under Sec.302 (2 counts) I.P.C.
A-1 to A-5 and A-8 to A-19 under Sec.302 read with 149 IPC.
A-20 to A-30 under Sec.302 read with 149 (2 counts) I.P.C.
A-2, A-3, A-6 and A-20 to A-23 under Sec.307 of I.P.C.
A-1, A-4, A-5, A-7 to A-19 and A-24 to A-30 under Sec.307 read with 149 of I.P.C.
A-25 under Sec.324 (2 counts) IPC.
A-1 to A-24 and A-26 to A-30 under Sec.324 read with 149 (2 counts) IPC.
A-17 and A-26 under Sec.326 of IPC.
A-1 to A-16, A-18 to A-25 and A-27 to A-30 under Sec.326 read with 149 of IPC.

CONVICTION AND SENTENCE:

A-1 - Guilty under Sec.302 IPC - life imprisonment and a fine of Rs.10,000/- with default sentence. Guilty under Sec.148 IPC - two years Rigorous Imprisonment.
A-6 - Guilty under Sec.304(ii) (2 counts) IPC - 10 years Rigorous Imprisonment for each count and a fine of Rs.2,500/- with default sentence. Guilty under Sec.148 IPC - 2 years Rigorous Imprisonment.
A-2 to A-5 and A-8 to A-16 - Guilty under Sec.304(ii) IPC - 7 years Rigorous Imprisonment.
A-7, A-17 and A-18 - Guilty under Sec.304 (ii) of IPC - 4 years Rigorous Imprisonment.
A-2 to A-5 and A-7 to A-18 - Guilty under Sec.148 of IPC - 1 year Rigorous Imprisonment.
A-3, A-19, A-20, A-21 and A-22 - Guilty under Sec.307 of IPC - 4 years Rigorous Imprisonment. Guilty under Sec.148 of IPC - 1 year Rigorous Imprisonment.

A-23 - Guilty under Sec.324 of IPC - 1 year Rigorous Imprisonment. Guilty under Sec.148 of IPC - 6 months Rigorous Imprisonment.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

A-24 – Guilty under Sec.324 of IPC – 1 year Rigorous Imprisonment. Guilty under Sec.148 of IPC – 6 months Rigorous Imprisonment.
A-25 to A-27, A-29 and A-30 – Guilty under Sec.148 of IPC – 6 months Rigorous Imprisonment.

2.Aggrieved over the order of acquittal made in the same judgment in respect of the first accused with regard to certain charges and in respect of the other accused with regard to all the charges as found in the judgment, the State has brought forth an appeal in C.A.No.468/2004.

3.Since all the appeals have come from the same judgment, the Court feels that it would be fit and proper to narrate the prosecution case in brief which runs as follows:

(a) P.W.1 is the son of the first deceased Nathanvel. The first deceased along with his family members was residing at Udaiyar Koil. The second deceased Petharu was also one of his sons. The first son of the said Nathanvel namely Moses, raised certain objections and also gave a complaint alleging that the first accused and his men made encroachment over the temple properties and also the poramboke lands belonging to the Government. On that ground, they were on inimical terms. On 26.6.1993, there was a band music programme in connection with the marriage function of one Palani. The second deceased Petharu, the said Palani and others danced to the tunes of the band music. There arose a quarrel, in which one Sundar and Ekambaram were attacked by the dancing persons. The son of the first deceased, Moses, and Devanesan who is examined as P.W.1, pacified the situation, and this was also immediate motive for the occurrence.

(b) On 27.6.1993, at about 9.00 A.M., all the accused including two accused Sekar and Arumugam, who died subsequently, came to the place of occurrence, all having weapons like wooden logs, iron pipes, cycle chains, etc. When they came, the first accused was questioning whether Moses was available. When an answer was given in the negative, he asked all other accused to attack. A-1 attacked the first deceased with a patta knife on the right eyebrow. A-3 attacked him with a patta knife on the left arm. A-4 attacked on his head with a patta knife. A-5 with a patta knife attacked on his head. A-6 also attacked him on the shoulder. When the second deceased Petharu, who is the son of the first deceased, questioned, A-6 immediately attacked him with a patta knife on the left cheek. A-8 attacked on his head with a patta knife, and A-9 cut him on the flank with a patta knife. A-10 also attacked him on the back with a knife. A-11 cut him on the back with an iron pipe. A-12, A-13, A-15 and A-16 attacked him with the wooden logs. When these two persons were attacked, they fell down. At that time, the other persons who were all eyewitnesses, namely P.Ws.2, 3 and 4, intervened. P.W.2 was attacked by A-3, A-6 and A-19 to A-22 with cycle chain, knife, and also wooden log respectively. When P.W.3 intervened, he was

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

attacked by A-23 with a knife and also by A-24 with an iron pipe. When the deceased persons began to run from the place of occurrence, A-7 and the deceased accused Arumugam, chased them and attacked the first deceased with the wooden logs. A-17 and A-18 attacked the second deceased with the wooden logs. As a result of the attacks, both of them sustained severe and grievous injuries. All the accused, on hearing the distressing cry and seeing the crowd gathered, ran away from the place of occurrence.

(c) P.W.13, the Inspector of Police, attached to Poonamallee Police Station, who got an intimation by telephone, immediately proceeded to the spot along with P.W.12, the Sub Inspector of Police, after making an entry in the General Diary. When they went to the spot P.W.1 gave a statement, which was recorded by P.W.12. The said statement stands marked as Ex.P1. Then, P.W.12 went to the Police Station and on the basis of Ex.P1, the complaint, registered a case in Crime No.2448/93 under Sections 147, 148, 323, 324 and 307 of I.P.C. The printed First Information Report, Ex.P12, was despatched to the Court.

(d) P.W.13, the Inspector of Police, on receipt of the copy of the FIR, took up investigation, made an inspection of the spot and prepared Ex.P2, the observation mahazar, and Ex.P23, the rough sketch. He recovered the material objects from the place of occurrence. Following the same, the two persons who sustained severe injuries, were taken to the hospital. The first deceased was taken to the Government General Hospital, while the second deceased was taken to Ramachandra Medical College Hospital. Both of them were declared dead. Following the same, the Investigator altered the case into Sec.302 of I.P.C. and sent an express report, Ex.P25, to the concerned Court. Then, the Investigator, who took up investigation, made an inquest on the dead bodies of Nathanvel and Petharu in the presence of witnesses and panchayatdars and prepared two inquest reports, Exs.P26 and P27, respectively.

(e) The injured witnesses were also sent to the hospital. P.W.6, the Doctor, admitted P.W.2, and the accident register copy is Ex.P5. P.W.11, the Doctor, examined the first deceased and has given the accident register copy, Ex.P15. He also examined the second deceased, and Ex.P16 is the copy of the accident register. He also examined P.W.2 and has issued the accident register copy, Ex.P19. P.W.4 was examined by the same Doctor, and Ex.P21 is the copy of the accident register. Then, the Investigator gave requisitions to the hospital authorities for the conduct of autopsy.

(f) P.W.10, the Medical Person, attached to the Government General Hospital, on receipt of the requisition, conducted autopsy on the dead body of Nathanvel and noticed cut injuries and contusions. The Doctor has issued Ex.P13, the postmotem certificate, with his opinion that the deceased died of head injuries.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

(g) The same Doctor, P.W.10, on receipt of the requisition, conducted autopsy on the dead body of Petharu and found cut injuries and contusions. He gave Ex.P14, the postmortem certificate, with his opinion that the deceased died of multiple injuries.

(h) Pending the investigation, the Investigator arrested A-8, A-9, A-10 and A-16 on 4.7.1993. The confessional statements voluntarily given by A-9 and A-16, were recorded. On 10.7.1993, he arrested A-17 and A-24. A-24 gave a confessional statement. The admissible part is marked as Ex.P29, pursuant to which, he produced an iron pipe, which was recovered under a cover of mahazar, Ex.P28. On 14.7.1993, A-23 was arrested. He gave a confessional statement. The admissible part is Ex.P30, pursuant to which, a knife was recovered under a cover of mahazar Ex.P31. The Investigator, pending the investigation, came to know that on 30.7.1993, A-1 and A-5 surrendered before the Court. He applied for police custody. It was also ordered, and police custody was taken. During enquiry, A-5 gave a confessional statement. The admissible part is marked as Ex.P33. A-1 gave a confessional statement. The admissible part is Ex.P31. Following the same, the knives which were used at the time of occurrence, were also recovered under a cover of mahazar Ex.P34. All the material objects recovered from the place of occurrence and also from the dead body, and the weapons of crime recovered pursuant to the confessional statements referred to above, were subjected to chemical analysis by the Forensic Sciences Department on a requisition given by the Investigator through the concerned Court, which resulted in two reports namely Ex.P36, the Chemical Analyst's report, and Exs.P37 and P38, the Serologist's reports. On completion of investigation, P.W.14, the Inspector of Police, who took up further investigation, filed the final report.

4.The case was committed to Court of Session and necessary charges were framed. In order to substantiate the charges, the prosecution examined 14 witnesses and also relied on 38 exhibits and 24 material objects. On completion of the evidence on the side of the prosecution, all the accused were questioned under Sec.313 of the Code of Criminal Procedure procedurally as to the incriminating circumstances found in the evidence of the prosecution witnesses, which they flatly denied as false. No defence witness was examined. The trial Court heard the arguments advanced and also paid its consideration on the materials available. After doing so, the lower Court found the appellants/accused guilty and awarded punishment as referred to above, while acquitted first accused in respect of the other charges and the other accused in respect of all the charges. Aggrieved over the said conviction and sentence, the appellants/accused have brought forth these appeals. Aggrieved over the acquittal part, the State has brought forth the appeal in C.A.No.468 of 2004.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

5.Advancing their arguments on behalf of the appellants, the learned Counsel would submit that in the instant case, the occurrence has taken place at about 9.00 A.M. on the alleged date i.e., 27.6.1993; that even as per the prosecution case, the occurrence has taken place in a public place; but, no one independent witness was examined; that all the witnesses examined namely P.Ws.1 to 4, were all closely related to both the deceased; that it is true that their evidence can be accepted; but, it must be tested by applying the test of careful scrutiny; that if applied, their evidence should have been rejected; that in the instant case, the evidence of P.Ws.1 to 4 is thoroughly filled with lot of discrepancies on the material particulars; that it is highly unacceptable that the F.I.R. has come into existence as put forth by the prosecution on number of grounds; that the occurrence has taken place at about 9.00 A.M.; that P.W.1 has spoken to the fact that within 5 to 10 minutes, just they got into the house, and immediately, when they came out, they saw the Police Officials; that according to the Investigating Officer, P.W.13, he got the telephone call, and he also made entry in the General Diary; but, the General Diary, though summoned, was not produced before the Court; that according to the Investigator, he was very clear as to the fact that the telephone call was pertaining to the occurrence; that when the said information was entered, the prosecution should have produced the General Diary also; that it seems that there was an answer by the prosecution that the same was destroyed; that the non-production of the General Diary before the Court will lead to the inference that had it been produced before the Court, it would have gone against the prosecution case, since it was the first information; that under the circumstances, what is now available before the Court alleged to have been given by P.W.1 to P.W.12, the Sub Inspector of Police, is only the second information and not the first information; that Ex.P1 is the statement which, according to the prosecution, was given by P.W.1 to P.W.12; but, the Investigator would claim that he was also present at the place; that had it been true, Ex.P1 would clearly reveal that the Investigator was also present either, or he should have recorded it; but, a perusal of Ex.P1 would clearly indicate that the Sub Inspector of Police has recorded the same; that it did not speak about the presence of P.W.13, the Investigator, at that time; that P.W.1 has categorically admitted that P.W.13 was also present at that time; that even P.W.13 has also admitted the same; that according to P.W.13, the statement of P.W.1 was recorded by P.W.12 in his presence, and P.W.12 took it to the Police Station, registered a case and brought a copy of the F.I.R. at about 10.00 A.M., and till the time, he was waiting at the place of occurrence; that it is highly unbelievable that for a period of two hours, he was waiting there; that added circumstance is that when the matter was actually brought to the notice of the police immediately and the case has also been registered, the F.I.R. has reached the Court at about 3.00 P.M.; that this delay was never explained by the prosecution; and that all would go to show that the F.I.R. has not come into existence as put forth by

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

the prosecution.

6.The learned Counsel would further add that in the instant case, P.W.3 was an eyewitness according to the prosecution; but, P.W.3 though claimed to have sustained cut injuries, never went to the Doctor; that she came forward to give a feeble explanation; that this would clearly show that she was neither eyewitness, nor she sustained injuries; that one person by name Maha, according to the prosecution, was very well available, and he also sustained injuries and was examined medically; that a medical certificate has also been produced by the prosecution; but, for the reasons best known to the prosecution, though he was cited as a witness, he was not examined before the Court; that it is a matter of surprise to note that a particular charge was framed in respect of the injuries sustained by him; that it is charge No.12; and that while a charge has been framed in a case like this, the non-examination of the said witness would be fatal to the prosecution case.

7.Added further the learned Counsel that in the instant case, one Jegannathan took all of them to the hospital; but, he was not examined; that according to the witnesses, he was also present; but, he was not examined; that in the instant case, so far as the eyewitnesses are concerned, there are lot of discrepancies in their evidence regarding the overt acts attributed; and that so far as Ex.P1 is concerned, it is highly doubtful whether it was the one given at that time.

8.The learned Counsel would add that as regards the first deceased, A-1 to A-6 have attacked him with the patta knives; that Ex.P1 does not speak about any one else, as if they attacked the first deceased; but at the time of evidence, there were some developments as if it was made by the other accused also namely A-17, A-18 and the deceased accused, and thus, it was subsequent development after looking to the postmortem certificate; that the Doctor would speak about the fatal injury that was caused on the skull; but, it was not corresponding to any injury caused with the help of the patta knife; that it would be quite clear that the injuries caused by A-1 to A-6, as alleged by the prosecution, were not fatal; that so far as the fatal injury is concerned, the F.I.R. does not speak about the accused, who caused the same; that so far as the corresponding injuries are concerned, there are lot of discrepancies; that so far as P.W.2 was concerned, number of persons have also been found guilty under Sec.307 of I.P.C., and A-3 and A-19 to A-22 were found guilty under Sec.307 of I.P.C. and awarded punishment; that though the witnesses have spoken to the injuries sustained, no corresponding injuries are found in the medical opinion, and thus, they are entitled for an outright acquittal; that so far as P.W.3 was concerned, though she is alleged to have been injured, no medical opinion was canvassed; that the conviction recorded by the lower Court under Sec.324 of I.P.C. in respect of A-23 cannot be sustained; and that in the absence of any evidence, the lower Court has found him guilty under Sec.324 of I.P.C.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

9.The learned Counsel would further add that in the instant case, it cannot be stated that they have got any common object; that the lower Court has spent a full paragraph in that regard wherein it is clearly found that there was nothing to show that all others had shared the same object of A-1, to call it as common object; that in the absence of common object, the lower Court should not have applied the penal provisions of Sections 148 and 149 of I.P.C.; that in the instant case, the prosecution has miserably failed to prove the case since it has suppressed the first information; that the second information what is before the Court is not believable; that the eyewitnesses have given discrepant evidence; and that if the test of careful scrutiny is applied, their evidence should be rejected.

10.It is further submitted by the learned Counsel for the appellants/accused that originally in the F.I.R., two persons were shown as Mahadevan and Devanesan as A-4 and A-8 respectively; but, at the later point of time, during the course of the evidence of P.W.1, it was found that both the names were pertaining to the same person; that it is only alias name; that at that point of time, it was found to be so; that no explanation was tendered by the prosecution; but, at the time of evidence, they wanted to shape the case in such a way; that it also casts a doubt on the prosecution case; that for these reasons, it has got to be held that the prosecution has not proved either the motive part or the occurrence or adduced acceptable evidence, and hence, the the benefit of doubt should be given to the appellants/accused, and they are entitled for acquittal in the hands of this Court.

11.The Court heard the learned Additional Public Prosecutor on the above contentions.

12.While assailing the order of acquittal made by the lower Court, the learned Additional Public Prosecutor would submit that the lower Court should have found all the accused guilty as per the charges levelled against them. He would further put forth his contentions by way of reply to the contentions put forth by the learned Counsel for the appellants and narrated above. According to the learned Additional Public Prosecutor, in the instant case, the prosecution has examined four witnesses; that they have clearly narrated the entire case; that according to all of them, they were all available at the place of occurrence namely the house of both the deceased Nathanvel and Petharu; that at that time, all the accused armed with deadly weapons, came over there; that it is pertinent to point out that the occurrence has taken place in front of the house of the deceased, in which P.Ws.1 to 4 were all residents; that once the prosecution is able to show that they have come all along with the deadly weapons, they should have got a common object to do a criminal act; that they were all instigated by A-1; that there is evidence available in that regard; that in the instant case, P.Ws.2, 3 and 4 were injured;

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

that it is true that so far as P.W.3 is concerned, no medical opinion was canvassed; but, it did not mean that the evidence of P.W.3 has to be rejected; that so far as P.Ws.2 and 4 are concerned, their evidence was available along with the medical evidence; that they have clearly narrated the entire incident; that in the instant case, it cannot be stated that their evidence is parrot like or discrepant; that in a case where number of accused nearly about 30 persons, as put forth by the prosecution, came with deadly weapons and attacked number of persons at that time, no one can expect a witness to look into the number of injuries sustained or numbers of attacks made or the parts of the body where the attack fell; that it is quite natural that when an occurrence was going on, these persons were also injured; that if the test of careful scrutiny is applied, it would clearly indicate that their evidence is natural and cogent; that regarding the discrepancies in the evidence pointed out by the learned Counsel for the appellants, they are all minor discrepancies, and it will not affect the case of the prosecution; that the lower Court having accepted their evidence as natural and cogent, should have found all the accused guilty as per the entire charges; but, the lower Court has taken a lenient view and found some of them guilty under Sec.304 (Part II) of I.P.C.; that it should have found all of them guilty since it was a case of double murder, and also P.Ws.2, 3 and 4 have also sustained injuries; that in the instant case, while the prosecution has brought forth probable, acceptable and reliable evidence, the lower Court should not have taken a lenient view in respect of the other accused also, since the prosecution has brought forth necessary evidence; and under the circumstances, they have got to be dealt with in accordance with law, apart from dismissing all the appeals filed by the appellants/accused.

13.The Court paid its anxious consideration on the submissions made by the learned Counsel for the appellants and also the learned Additional Public Prosecutor.

14.In the instant case, it is not a fact in controversy that two persons Nathanvel and Petharu, were done to death in an incident that took place at 9.00 A.M. on 27.6.1993, in front of their house. Following the inquest made by the Investigator, both the dead bodies were subjected to postmortem by P.W.10, the Doctor. The postmortem certificates issued by him, were also marked as Exs.P13 and P14 respectively, wherein it has been clearly opined that the first deceased died of head injuries, and the second deceased died of multiple injuries. Apart from that, this fact that they died out of homicidal violence was never questioned by the appellants/accused at any stage of the proceedings. Hence, the fact that they died out of homicidal violence has got to be recorded so.

15.In order to substantiate the accusation made against all these accused, the prosecution marched 4 eyewitnesses, who are P.Ws.1 to 4. It is well settled proposition of law that when an eyewitness happens to be an injured witness also, unless and until

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

strong circumstance or reason is brought to the notice of the Court, the evidence should not be discarded. The Court is mindful of the legal proposition that it is a case where all these four eyewitnesses were closely related to both the deceased, and hence, it has to apply the test of careful scrutiny. The Court made a thorough scrutiny of the evidence put forth before the trial Court. Even after the exercise of the test of careful scrutiny, the Court is satisfied with their evidence, since it has inspired the confidence of the Court, and hence, their evidence is acceptable.

16.Now, the contentions put forth by the learned Counsel for the appellants levelling criticisms against the case of the prosecution, have to be considered. The first contention that was raised was that the F.I.R. has not come into existence as put forth by the prosecution; that the evidence of P.W.1 and the other witnesses is highly improbable; that what is now before the Court is not the first information; that according to P.W.13, the Inspector of Police, when he was on duty at the Police Station, he received a telephone call that there was an incident, and immediately, he made an entry in the General Diary and proceeded to the spot along with the Sub Inspector of Police and his party, and thus, it is true that the General Diary entry was made; but, the General Diary was not before the Court since it was not found. At this juncture, it has to be pointed out that the fact that the telephone call was received by the Inspector of Police and it was entered by him in the General Diary, at no stretch of imagination, will constitute the first information received and lead to the registration of a criminal case. Hence, that contention has got to be rejected.

17.It is pertinent to point out that the Investigator, P.W.13, immediately proceeded to the spot along with the Sub Inspector of Police, P.W.12. This fact is spoken to not only by the Police Officers, but also by P.W.1, and thus, it would be quite clear that the Inspector of Police was also present along with the Sub Inspector of Police. All the witnesses have spoken to the fact that P.W.1 gave a statement which was recorded by P.W.12, the Sub Inspector of Police, in the presence of P.W.13, the Inspector of Police. P.W.12, the Sub Inspector of Police, took that statement marked as Ex.P1, to the Police Station, registered a case and came back with the copy of the F.I.R. On receipt of the copy of the F.I.R. only, the Investigator proceeded with the investigation. Merely because the Inspector of Police was at the place of occurrence for a period of two hours, it cannot be stated that either Ex.P1, the complaint, or the F.I.R. is improbable or the delay that was caused could be found fault with. It remains to be stated that at the place of occurrence, the Inspector of Police was also waiting, and he proceeded with the investigation, which could not also be found fault with. The investigation was taken up by him immediately, and he proceeded with the same. As could be seen, it was proper. The Court is unable to notice any infirmity or any flaw in the manner in which the F.I.R. has come into existence. It is true that in the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

F.I.R., there are discrepancies found. There are persons mentioned therein namely Mahadevan and Devanesan as A-4 and A-8 respectively; but, both these names are found to be the same. Now, at this juncture, the Court has to look into the frame of mind of P.W.1 at the time when the first information was given. At the place, two persons were severely injured, and the frame of mind of the person at that juncture led him to give such narration. Merely because single person is named as two, the same, at this juncture, cannot be a reason to reject the case of the prosecution in entirety.

18.It has to be further pointed out that in the instant case, it is true that no independent witness has been examined. The occurrence has started inside the house, and it was in front of the house of the deceased. While four witnesses have been examined, out of whom three have been injured, the non-examination of the independent witness, in the opinion of the Court, will not in any way affect the prosecution case. Merely because the independent witnesses have not been examined, it cannot be stated that the evidence of the examined witnesses should be doubted or should be rejected. This Court is of the considered opinion that the evidence of the examined witnesses has inspired the confidence of the Court.

19.At this juncture, it has to be pointed out that originally, there was a motive, in respect of the properties that were encroached upon by the accused party, and a complaint was made by one Moses, one of the sons of the first deceased. The evidence would go to show that there was a marriage function, and at the time of band music programme, some of the persons belonging to the accused party, were also attacked, and they were all under the impression that Moses one of the sons of the first deceased, was responsible for that. Therefore, at the time, when the accused came over there, they called Moses to come out; but, Moses was not available, and then, they began to attack the persons, who knew them. But, the lower Court was not ready to record a finding that there was any unlawful assembly. Even after recording a finding that there was no unlawful assembly having a common object, the lower Court was under the impression that the other accused could not have shared the object of the first accused. In such circumstances, the lower Court should not have found any one of the accused guilty under Sec.148 of I.P.C., but has misapplied the provision under the stated facts. The Court has to necessarily agree with the contentions put forth by the learned Counsel for the 7th accused.

20.In the instant case, both the deceased persons were taken to the hospital, and they were actually found dead. Thereafter, the inquest followed, and the dead bodies were subjected to postmortem. The postmortem certificates have also been given. So far as the first deceased was concerned, the Postmortem Doctor has found that there was only one fatal injury found on the head, and that fatal injury as put forth by the learned Counsel for the appellants, could not have been caused by the patta knife. Thus,

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

it should have been caused only by a blunt weapon. Even in the FIR, what is attributed in respect of the first deceased, is the act of A-1 to A-6. As per the medical evidence, it was found to be the act of the other accused, against whom there is no whisper in the FIR. So far as the fatal injury found on the first deceased was concerned, it was not caused by A-1 to A-6. Under the circumstances, this Court is of the considered opinion that in the absence of the common object, they should be dealt with for their individual acts. But, the lower Court has found A-1 guilty under Sec.302 of IPC and A-2 to A-6 guilty under Sec.304(ii) of IPC and awarded life imprisonment to A-1, 10 years Rigorous Imprisonment to A-6 and 7 years Rigorous Imprisonment to A-2 to A-5. As could be seen from the medical evidence, as regards A-1 to A-6, corresponding injuries are also noticed, and hence, it would be quite safe that with the available evidence and the medical opinion coupled with the individual acts, they could be found guilty under Sec.326 of I.P.C., and awarding of 3 years Rigorous Imprisonment would meet the ends of justice.

21.So far as the second deceased was concerned, the lower Court has found A-6 to A-18 guilty under Sec.304 (Part II) of I.P.C. and awarded different punishments as stated supra. At this juncture, as could be seen from the postmortem certificate, due to the cumulative effect of the injuries sustained, the second deceased died. According to the prosecution, there is evidence to show that A-6 to A-18 were attributed with overt acts for the death of the second deceased. Under the circumstances, this Court is of the considered opinion that without any discrimination, the acts of these accused, as rightly found by the lower Court, have got to be found guilty under Sec.304 (Part II) of I.P.C., and awarding punishment of 4 years Rigorous Imprisonment would meet the ends of justice.

22.Insofar as the injuries sustained by P.W.2, A-3 and A-19 to A-22 were found guilty under Sec.307 of I.P.C. and awarded 4 years Rigorous Imprisonment. The learned Counsel took the Court to the different wound certificates and also pointed out that no corresponding injuries are found regarding the attacks made. The learned Additional Public Prosecutor after perusal of the same also submitted that it was found to be so. Though the witnesses have spoken about the attacks made by these accused with the specific weapons, in the absence of any corresponding injury, it would not be fit and proper to find these accused guilty under Sec.307 of I.P.C. as one of attempt to murder. Hence, A-3 and A-19 to A-22 are entitled for acquittal.

23.So far as P.W.3 is concerned, the lower Court found A-23 guilty under Sec.324 of I.P.C.; but, no medical evidence was put forth in support of the prosecution. Apart from that, had it been true that P.W.3 sustained any injury, there was no impediment for canvassing a medical opinion even at a later point of time; but, it was not done so. Merely on the evidence of P.W.3 that she sustained injuries, it would not be safe to find A-23 guilty under Sec.324 of I.P.C. Hence, A-23 is entitled for acquittal in

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

respect of the said charge.

24.As regards P.W.4, A-24 was found guilty under Sec.324 of I.P.C. and awarded one year Rigorous Imprisonment. The medical evidence would go to show that corresponding injury is found, and the accident register copy is also marked in that regard. In view of the same, the conviction and sentence imposed on him, has got to be sustained.

25.For the reasons stated above, the following order is passed.

(i) The conviction of A-1 under Sec.302 of I.P.C. and A-2 to A-6 under Sec.304 (Part II) of I.P.C. and the consequent sentence imposed upon them are set aside, and instead, they are convicted under Sec.326 of I.P.C. and directed to suffer three years Rigorous Imprisonment.

(ii) The conviction of A-6 to A-18 under Sec.304 (Part II) of I.P.C. and the consequent sentence imposed upon A-7, A-17 and A-18 alone are confirmed. The sentence imposed upon A-6 and A-8 to A-16 is modified, and they are directed to suffer four years Rigorous Imprisonment.

(iii) The conviction and sentence imposed upon A-3 and A-19 to A-22 under Sec.307 of I.P.C. are set aside, and they are acquitted of the said charge.

(iv) The conviction and sentence imposed upon A-23 under Sec.324 of I.P.C. are set aside, and he is acquitted of the said charge.

(v) The conviction of A-24 under Sec.324 of I.P.C. and consequent sentence imposed upon him are confirmed.

(vi) The conviction and sentence imposed upon A-1, A-2, A-3, A-5, A-6, A-7 to A-18, A-19 to A-27, A-29 and A-30 under Sec.148 of I.P.C. are set aside, and they are acquitted of the said charge.

(vii) The sentence imposed upon A-6 shall run concurrently.

(viii) The period of sentence already undergone by A-1 to A-18 and A-24, is ordered to be given set off.

26.So far as the appeal filed by the State is concerned, for the reasons stated above, this Court is unable to find any reason to find A-28 guilty, since his name does not find place in the FIR. It is also pertinent to point out that there is no overt act mentioned in Ex.P1, the complaint, in his regard. So far as the other accused are concerned, the prosecution has miserably failed to prove those charges against them. As held above, there is no common object. In the absence of acceptable evidence, the lower Court was perfectly correct in rejecting the case of the prosecution in respect of those charges and acquitting those accused. In such circumstances, the appeal preferred by the State has got to be dismissed.

27.In the result, C.A.No.3 of 2004 is allowed in respect of A-23, A-25, A-26, A-27, A-29 and A-30 and is dismissed as against A-24. C.A.No.11 of 2004 is dismissed. C.A.Nos.13 and 17 of 2004

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

are dismissed with the above modification in sentence. C.A.No.21 of 2004 is allowed in respect of A-22 and is dismissed with the above modification as regards A-6 and A-11. C.A.No.24/2004 is allowed. C.A.No.51/2004 is dismissed with the above modification in conviction and sentence. C.A.No.134/2004 is dismissed with the above modification in respect of A-2, A-8, A-9, A-10, A-12 and A-16. It is brought to the notice of the Court by the learned Counsel for the appellants that A-18 is dead. In respect of A-17 and A-18, C.A.134/2004 is dismissed. C.A.No.147/2004 is allowed in respect of A-20 and A-21 and is dismissed in respect of A-5 and A-15 with the above modification. C.A.No.152/2004 is dismissed with the above modification in conviction and sentence. It is reported that A-1 to A-18 and A-24 are on bail. Hence, the Sessions Judge shall take steps to commit them to prison to undergo the remaining period of sentence. The bail bonds executed by A-19 to A-27, A-29 and A-30 shall stand terminated.

28.In the result, C.A.No.468 of 2004 is dismissed.

Mr.K.Veeraraghavan, appointed as Amicus Curiae to argue the case on behalf of A-28 in C.A.No.468 of 2004 is entitled to get remuneration from the Legal Aid, Madras.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Additional District and
Sessions Judge
(Fast Track Court No.3)
Chingleput at Poonamalle

2. Do- Thro The Principal Sessions Judge,
Chengalput.

3. The Judicial Magistrate No.II,
Poonamallee.

4. The Judicial Magistrate No.I,
Poonamallee.

5. Do Thro The Chief Judicial Magistrate,
Chengalput.

6. The Superintendent, Central Prison,
Vellore.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

7. The Superintendent, Central Prison,
   Chennai.

8. The Station House Officer,
   Poonamallee Police Station,
   Poonamallee.

9. The Officer in Charge,
   Trichy cantonment Police Station
   Trichy.

10.The Inspector of Police
  Vellavedu Police Station
  (Crime No.2448/1993)

11.The Public Prosecutor
  High Court, Madras.

12. The Secretary,
Legal Aid,
High Court, Chennai 104.

Copy to:-

Mr. K. Veeraraghavan, Advocate
(Amicus Curiae), High Court, Madras.

+ 1 cc to Mr. A. M. Rahamath Ali, Advocate SR No. 45235
+ 1 cc to Mr. R. S. Jeevarathinam, Advocate SR No. 45086
+ 1 cc to Mr. T. Sudantharam, Advocate SR No. 45511

Nsv/

HPR(CO)
SR/12.10.2006

C.A.Nos.3, 11, 13, 17,
21, 24, 51, 134, 147, 152
and 468 of 2004

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/